



**Michigan Supreme Court
State Court Administrative Office**

P.O. Box 30048
Lansing, Michigan 48909
Phone: (517) 373-0130 Fax: (517) 373-2112
John D. Ferry, Jr., State Court Administrator

Memorandum

DATE: March 11, 2004

TO: All Judges
cc: Court Administrators, Clerks, Probate Registers, Friends of the Court

FROM: John D. Ferry, Jr.

RE: Servicemembers Civil Relief Act

On December 19, 2003, President Bush signed into effect the Servicemembers Civil Relief Act, *50 USCS Appx 501, et seq.*, that completely rewrites the Soldiers and Sailors Civil Relief Act of 1940. *50 USC Appx 521* requires in any civil proceeding in which the defendant does not make an appearance, an affidavit be filed stating whether or not the defendant is in military service and showing the necessary facts to support the affidavit; or stating that the plaintiff is unable to determine whether or not the defendant is in the military service.

If the defendant is on active duty in the military service (as defined by section 101(d)(1) of Title 10 USC), default judgment cannot be entered until the court appoints an attorney to represent the defendant. If the servicemember cannot be located, the attorney's actions do not waive any defense, or otherwise bind the servicemember. If the court is unable to determine whether the defendant is in military service, prior to entering default judgment the court may require the plaintiff to file a bond in an amount approved by the court. The bond shall remain in effect until expiration of the time for appeal and setting aside of a judgment under applicable law.

A servicemember may waive any of the rights and protections of this Act. If the action or proceeding is based on a legal instrument (mortgage, deed, lien, lease, etc.), the waiver is effective only if made pursuant to a written agreement of the parties that is executed during or after the servicemember's period of military service. *50 USCS Appx 517.*

In addressing civil infraction actions eligible for default, if a waiver of rights has not been received the case should be moved to inactive status.

March 12, 2004

To: All Judges, Court Administrators, Clerks, Probate Registers,
Friends of the Court

Re: Servicemembers Civil Relief Act

The Act does not address payment for court appointed attorneys on these cases. Each court will need to decide whether plaintiffs seeking default judgment, the defendant, or the court will be responsible for payment. Attorneys must be appointed to these cases pursuant to each court's Indigent Counsel LAO.

The applicable SCAO Approved Forms are being amended to reflect these changes. If you have any questions, please contact Dawn Childress at childressd@courts.mi.gov (517)373-3756 or Sandi Hartnell at hartnells@courts.mi.gov (517)373-0122.